IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9949 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

A'BAD MUNICIPAL CORPORATION

Versus

A'BAD MUNICIPAL CORPORATION OCTROI KARMACHARI SANGH

Appearance:

MR MR ANAND for Petitioner No. 1
RULE SERVED BY DS for Respondent No. 1,10
MR MB GANDHI for Respondent No. 2
RULE SERVED for Respondent No. 3-4,6-9,11-19
MR KS ACHARYA for Respondent No. 5
RULE UNSERVED for Respondent No. 10
MR KV GADHIA for Respondent No. 20

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision:-12/10/2001

C.A.V. JUDGEMENT

This petition has been filed for quashing and setting aside the award dated 23-5-1991 passed by the Arbitrator and order dated 31-12-1992 Annexures "F" and "K" respectively.

2. The Arbitrator has passed award Part-I to Part-IV deciding the various issues covered by the Arbitration. The present award is in respect of the question of promotion policy for all the departments of the Corporation and other institutions covered by the Arbitration including Ahmedabad Municipal Transport Service. It was stated before the Arbitrator that the workmen working on the same posts on which they were initially recruited with the same pay scale, they have not been given any benefits in respect of the selection grade and higher pay scale and those workmen include Class - IV posts of safai kamdars, majdoors, watchman peons, mali, ward-boy, aya, sweepers, faras etc. etc. and number of posts of Class - IV like "Nondhanidar, Fireman, Dresser, Telephone Operator, Kadia, Luhar, Suthar, Bailiff, etc. They had no chance of promotion at all. There is no promotional channel for all of them, with the result they are required to retire in the same post in which they were recruited. In several other posts there are some chances of promotion. But the chances are such that very few can avail benefit of promotion in the entire service career even after putting in service of 15 years and even more. The Arbitrator was in agreement with the Unions that this would lead to frustration and lack of enthusiasm. It is also found by the Arbitrator that it is now well settled that in a service career there must be adequate chance of promotion. Every employee looks forward to a satisfactory career of progress. Financial responsibility of an employee goes on increasing and if his pay does not rise with the passage of time, it would adversely affect his mental condition which have its inevitable effect on the discharge of his duties and responsibilities. Hence, the Arbitrator was of the firm opinion that all the workmen irrespective of the posts on which they are working must get higher pay scale after they put in particular number of years of service on the same post. Lack of vacant posts in the higher scale should not deprive the workmen of higher pay-scale when they have already worked for a number of years on the same post and gained valuable experience. The Government of Gujarat has introduced a scheme for grant of higher pay scale to its employees after several years of service on the same post and according to the same scheme introduced by the State Government, first higher scale if any employee has completed 12 years of service in the

same pay scale, second higher pay scale on completion of 24 years should be given subject to certain condition and according to the Arbitrator the scheme should be applied to the workmen of the Corporation and other institution covered by the present Arbitration and that scheme is reasonable and balanced for grant of higher pay-scale to overcome the stagnation due to absence of restricted chances of promotion. The State Government by the resolution dated 28-2-1991 has framed the policy which is to be applied to the workmen under the present arbitration with the following modifications :

(i) "The existing screening mechanism/selection procedure" mentioned in clause (vii) of the G.R. will be applied to the workmen covered by the present arbitration only where such screening mechanism/selection procedure exists. If it does not exist, no now screening mechanism/selection procedure shall be created.

(ii) In Clause (xiii) there is a mention of senior scale having been granted after 17 years of service in respect of certain posts. In case of workman herein, it would also cover the selection grades or senior scales granted for lesser or higher number of years' service as the case may be.

(iii) Wherever 'Senior Scale' has been mentioned in the G.R. or its Annexures , it would also mean 'Selection Grade" or Senior Grade or Scale.

3. If any modification is made by the State Government in the aforesaid G.R.. it would also be applicable to the workmen of the present Arbitration, unless contrary to subject or context. It is also held by the Arbitrator that the promotion should be given on the basis of pure seniority unless there is positive demerit in the senior person due for promotion whose work is not found satisfactory. Under normal rule, promotion should be given according to the seniority. The contention of the Union that where designations and duties and responsibilities of two posts are the same, qualification to be laid down for the posts should be the same and two different qualifications, one higher and the other lower should not be prescribed for similar posts was rejected.

4. So far as the English Teachers in the Corporation is concerned, the Arbitrator has held that the English Teacher should be placed at par with the trained teacher and they should be given pay-scale available to the trained teacher and the untrained teacher should be given selection grade as given to the trained teachers in the School Board. Regarding stop gap arrangement, it has been held that in case stop gap arrangement continues for years together for which another person with the required qualification is appointed and the workman who had worked satisfactorily on the same post for number of years is reverted on the ground that he does not possess qualifications required for the post. Such stop gap arrangement should not be continued for a long period inasmuch as the workman concerned experiences uncertainty all the time. The Arbitrator directed that if at all there is no necessity to make stop gap arrangement and such stop gap arrangement should not continue for more than one year. At the end of the year, either the appointment of the workman working on the higher grade should be made regular if permissible under the Rules or should be reverted to his original post. Regarding stagnation increments, it has been held that even after the scheme for grant of higher pay-scale referred to is put into effect, a workman stagnates at the maximum of the scale, stagnation increments shall be given on the following terms :

(i) One stagnation increment shall be allowed to all workmen who stagnate at the maximum of their revised scale of pay awarded in his Award Part-III, for every two years or more on or after 1st January, 1986. A maximum of three such increments shall be allowed.

(ii) The period of two years stagnation shall be computed from the date of reaching the maximum of the scale and includes period, if any, during which the workman worked on higher post.

(iii) The stagnation increment shall be equal to the last increment and shall be treated as personal pay.

(iv) The stagnation increment shall be recokned as pay for the various purposes viz. D.A., H.R.A., C.L.A. T.A., L.T.C., Pension, DCRG land Family Pension.

(v) On subsequent promotion to higher posts the pay in the higher post shall be fixed with reference to basic pay in the lower post excluding the personal (stagnation increment. However, if pay plus personal pay (stagnation increment) is the lower post is higher than the pay fixed in the higher post, the difference shall be allowed as absorbable personal pay.

5. And existing normal channel promotions shall continue as at present. Subsequently, the Government of Gujarat has passed resolution regarding higher pay scale/selection grade for stagnation periods. One increment should be given after completion of 9 years service on last pay scale. Second Stagnation increment should be given after completing 18 years service on the same pay scale. In the same manner, third increment has been allowed to be given after period of next 9 year's service. Thus, the resolution has given stagnation increments at the service of nine years service, 18 years service and 27 years service.

6. Heard the learned counsel for the parties. The contention of the learned counsel for the petitioner is that the Arbitrator has travelled beyond his jurisdiction. The matter referred under the Arbitration was to examine as to what policy should be pertaining promotion and selection grades in respect of all the cadres and the grade while considering the above terms under the reference the Arbitrator was required to take into consideration the existing financial resources of the Corporation. Thus, the policy of 9 years, 18 years and 27 years was not referred at all and that was not in issue for consideration and hence the Arbitration was not at all justified to consider and give the benefit of policy of 9 years, 18 years and 27 years to the employees. In that respect, the matter could have been referred separately and independent award could have been passed after considering the material on record. It is also contended that at the relevant time, existing financial position of the Corporation was very bad and that has not been considered at all. It has been held in the interim award by the Arbitrator dated 16-12-1986. "From the above discussion it appears that the financial position of the Corporation, on the whole is not happy. However, it was pointed out by Shri V.H. Dikshit that the Corporation is not a business concerned but is a semi Government organisation and so the expenditure has to be decided thereafter and then resources have to be found out to meet out with the expenditure. Thus, financial

condition of the petitioner Corporation was not satisfactory and good. In the main award, the Arbitrator has not considered at all regarding financial condition of the Corporation while passing the award. As such, as required under Clause 7 of the agreement in absence of any consideration regarding financial position of the Corporation, the Arbitrator was not justified in passing the award and he has passed the award beyond his jurisdiction. The award being beyond the terms of the reference is null and void. Learned counsel for the petitioner has placed reliance on the decisions of the Supreme Court reported in the following authorities :

(i) In the case of Precision Bearings India Ltd. Vs. Baroda Mazdoor Sabha and another, reported in AIR 1978 SC 419, wherein it is observed as under :

> "But we disallow because there is a deliberate omission to make a reference of that item and so falls outside the jurisdiction of the Tribunal."

ii. In the case of Union of India Vs. Others Vs. Santiram Ghosh and others, reported in 1989 (Supple.I) SCC 68 wherein it has been held as under :

> "There was also no scope for directing the Government to frame proper Recruitment Rules for the posts of Senior Scientific Assistants-Level I and Scientific Assistants-Level II. It is, therefore apparent that in making the award, the Board of Arbitrators has acted beyond the terms of reference."

(iii) In the case of Union of India and others Vs. Tejram Parasshramji Bombhate reported in 1991 (III) SCC 11, wherein it has been observed as under :

> "The Tribunal, however, has directed the Central Government immediately to take up an assessment of the needs of the school to carry on its activities at the present level and to create a sufficient number of posts to be filled up on regular basis. The Tribunal has directed the Central Government to take steps to fill up the newly created posts in accordance with the recruitment rules to be framed for the purpose. No Court or the Tribunal could compel the Government to change its policy involving expenditure. The Tribunal, therefore, could not

have issued the directions as it did to compel the Central Government to assess the needs of the school and create the necessary posts without support of law.".

7. It is also contended on behalf of the Corporation the Corporation has primary duty and that cannot be ignored and the petitioner Corporation cannot be compared with incomparable which is a State Government. The award has been passed without application of mind in deciding relevant issues. The application was moved for speaking to minute on 29-11-1991 which was rejected on 31-12-1992 holding that the Arbitrator is a functus officio. But it cannot be said that the Arbitrator has become functus officio for passing appropriate orders. Reliance has been placed on the decision of the Supreme Court in the case of Anil Sood Vs. Presiding Officer, Labour Court, II reported on JT 2001 (3) SC 240 (para 4, 5 and 6)

8. It is pointed out contended by the learned counsel for the respondent that Para 5 of the award is in respect of the promotion policy which deals with special pay and promotion policy. Special increment by way of policy of 9 years, 18 years and 27 years has been given to very few persons and not to all the employees of the Corporation adopting the policy of the State Government. It is mentioned in the agreement itself that all the persons concerned including the petitioner Corporation agreed that the decision of the Arbitrator will be binding on them. While on the contrary the learned counsel for the petitioner submitted that special pay for stagnation period has been given with effect from 1986 though the State Government has introduced that policy in the year 1991. The Government Resolution dated 28-2-1991 has been adopted by the Arbitrator treating the petitioner Corporation at par with the State Government though the Corporation has no status equal to State Government. The policy determined by the State Government in the year 1991 could not have been given effect from the date 1-1-1986 even from any subsequent to year 1991 in view of the financial position of the Corporation Thus, the award passed by the Arbitrator is beyond jurisdiction and is not sustainable in the eye of law.

9. On the contrary, learned counsel for the respondents contended that this petition is liable to be dismissed with costs on the ground that only Ahmedabad Municipal Corporation has filed the present petition though other Corporations and affected parties have not filed any petition challenging the award or order under

Reference they have accepted the awards. Hence, the principle of res judicata would be applicable in this case. The petition is also liable to be dismissed on the ground of delay and latches. The impugned award was published in the notification on 11-7-1991 and the petition has been filed on 7-6-1993 and no explanation has been offered. The award is the one and same though it deals with different department in different parts. The Part-I of the award has been confirmed and hence the question of finance cannot be raised in this petition. Part-II of the award dated 16-12-1986 regarding the financial aspect has not been challenged by the petitioner. Thus, it confirms the financial aspect decided by the Arbitrator and that cannot be challenged in this petition. The financial aspect has already been confirmed, the said issue cannot be looked into again and review application regarding the financial position of the petitioner Corporation was rejected and the financial aspect has already been considered and decided and therefore the same cannot be reconsidered by this Court. There is no jurisdictional error. Learned counsel for the respondent has placed reliance on the decision of the Supreme Court reported in AIR 1984 SC 38.

10. I have considered the various rival contentions and submissions made by the learned counsel for the parties and perused the relevant material on record.

11. So far as the contention of learned counsel for the respondent that the petition is barred by delay and latches is concerned, I have also considered this contention and the said contention is not tenable at law in view of the fact that the award was pronounced on 23-5-1991. Thereafter, it was notified . Then an application for speaking to minute was filed by the petitioners on 29-10-1991 and the same was decided on 31-12-1992. Thereafter, some letters were sent by the learned counsel for the petitioners on 1-3-1993. But the petitioner did not receive any reply and waited for sometime. Thereafter, this petition has been filed on 1-6-1993 as no limit is prescribed under the Limitation Act and even some delay is occurred in filing the petition, in the interest of justice the petitions are being entertained by the Court of law and suitable orders are passed. As such, this petition is not barred by delay and latches.

12. Second contention of the learned counsel for the petitioner is that the Arbitrator has travelled beyond his jurisdiction as the question regarding the policy of 9-18-27 years was not to be considered by the Arbitrator

and that issue was not referred to him under the Arbitration Reference. Hence, the award is illegal and beyond the jurisdiction of the Arbitrator. In this connection I may refer to Clause 5, 6 and 7 of the Reference, which read as under :

(5) To examine as to what should be the policy pertaining to promotion and Selection Grade in all cadres.

(6) Whether the Award of the Arbitrator should be effective from 1st May, 1980, or any other date.

(7) While considering the above terms of reference the Arbitrator shall take into consideration the existing financial resources of the Corporation.

13. Clause (5) pertains to examine as to what should be the policy pertaining to promotion and Selection Grade in all cadres. Whereas Clause (7) provides that while considering the above reference the Arbitrator shall take into consideration the existing financial resources of the Corporation. It is not specifically mentioned in Clause (5) as to the policy of 9-18-27 years should be considered or not. But that clause includes the policy pertaining to the promotion and selection grade in all the cadres where there is no chance of promotion to any employee that consideration comes into play. That includes to any grade and stagnation increments. As such, I do not find any substance in the contention of the learned counsel for the respondent that the Arbitrator has acted beyond his scope or he acted beyond his jurisdiction.

14. The next question is in respect of the financial position of the Corporation which has to be taken into consideration by the Arbitrator as per above clause (7). It is true that in the award granting interim relief the Arbitrator has found that the financial position of the Corporation is not very sound. But it does not mean that the Arbitrator has not taken into account the financial position of the Corporation. Even if the financial position of the Corporation is not sound or good, the workman has legitimate right for certain service benefits by way of promotion, higher grade, selection grade including stagnation increments and that should not be ignored only on the ground that the financial position of the Corporation is not very sound or good. If somebody has right under the Government's policy as well as the

Rules/Regulations that has to be complied with and right can be determined by the authority concerned in light of the Government's Resolutions prescribing certain policy or any other Rules/Regulations giving benefits to the workmen. It is true that the financial position of the Corporation was not sound at the relevant time or may be at the time when the award was declared. In that connection, this Court can consider to relieve the Corporation from the current crises of the financial Corporation to certain extent. In this connection, learned counsel for the respondent pointed out that the award has been made effective from 1986 though the award was declared on 23-5-1991 though the said policy was published on 5-7-1991. In other Municipal Corporation like Vadodara Municipal Corporation this policy has already been adopted in the year 1992 even though the financial position of the petitioner Corporation is tight the petitioner Corporation is required to adopt the same at an early date as far as possible. But the other Municipal Corporation like Vadodara Municipal Corporation has already adopted this policy in the year 1992. This Court suggested to the Corporation as to whether they are ready to accept the policy of stagnation increments on the basis of the policy of 9-18-27 years. But at the time of hearing learned counsel for the petitioner submitted that the petitioner Corporation is unable to adopt the aforesaid policy of 9-18-27 years.

15. The contention of the learned counsel for the petitioner is that the Tribunal has erroneously held that it has no jurisdiction to entertain and decide the matter about application for speaking to minutes as the Arbitrator has become functus officio. This argument has no substance because the application for speaking to minutes was in the nature of review of the decision and for quashing and setting aside the main award and to give fresh award. Even if it is assumed that the Arbitrator has not become functus officio as contended by the learned counsel for the petitioner, the application of speaking to minutes can be entertained only for clerical or typographical or arithmetical errors. But that application for speaking to minutes does not lie for review of the main award. As such, this contention of the learned counsel for the petitioner is not sustainable in the eye of law.

16. Considering the facts and circumstances of this case stated above and financial position of the petitioner Corporation, the policy of the State Government regarding stagnation increments on completion of 9-18-27 years of service, should be implemented from

1-4-1992, as the same policy has been adopted by the Vadodara Municipal Corporation, which would serve the ends of justice.

17. Accordingly, this petition is allowed in part and the award dated 23-5-1991 shall be implemented with effect from 1-4-1992 which would meet the ends of justice. Interim order if any stands vacated.

In the last learned counsel for the petitioner requested this Court to stay the operation implementation of this order for a period of four weeks to approach before the higher forurm. I do not find any good reason to exceede the said request. Therefore, the request of the learned counsel for the petitioner is rejected.

Date:-12-10-2001. (Kundan Singh, J.)

Correction made vide order dated 21-12-2001.

Sd/-
(Kundan Singh, J.)
21-12-2001.

SPEAKING TO MINUTES DATED 29-11-2001 FILED

IN SPECIAL CIVIL APPLICATION NO. 9949 OF 1999.

Coram : Kundan Singh, J.

(21-12-2001)

O R A L O R D E R.

Heard the learned counsel for the parties.

Learned counsel for the respondent - Union of the employees of the Ahmedabad Municipal Corporation pointed that the parity in adopting the stagnation policy of 9-18-27 years has been adopted from the Vadodara Municipal Corporation vide resolution dated 2-12-1992 with effect from 1-4-1992. This Court also mentioned in

paragraph no. 14 of the judgment dated 12-10-2001 passed in Special Civil Application No. 9949 of 1993 that the other municipal corporations like Vadodara Municipal Corporation has adopted the policy in the year 1994. This fact has been wrongly mentioned in the judgment due to some misconception and inadvertence as the Vadodara Municipal Corporation has adopted policy from 1-4-1992.

On the other hand, learned counsel Mr. Anand for the petitioner Ahmedabad Municipal Corporation submitted that the other Municipal Corporations of the Gujarat State except Rajkot Municipal Corporation and Bhavnagar Municipal Corporation have adopted this policy with effect from different dates and said Rajkot Municipal Corporation and Bhavnagar Municipal Corporation have not implemented that policy so far.

I have considered the facts and circumstances of this case, resolution dated 2-12-1992 passed by the Vadodara Municipal Corporation has been directed to be placed on record. It appears that at the time when the judgment was dictated or drafted the copy of the aforesaid resolution dated 2-12-1992 of Vadodara Municipal Corporation was not available before me. Hence, the aforesaid mistake has occurred in the judgment. relevant dates mentioned in the judgment are corrected and it is modified to the effect that award dated 23-5-1991 shall be implemented with effect from 1-4-1992. Accordingly, date of implementation of the aforesaid judgment is corrected in the original judgment. The copy of the resolution dated 2-12-1992 passed by Vadodara Municipal Corporation is taken on record.

Date:-21-12-2001. (Kundan Singh, J.)

/JVSatwara/